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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9264 of 1993

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be  
allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil  
Judge? No

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NARSI BACHA THACKER

Versus

STATE OF GUJARAT

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Appearance:

MR AR THACKER for Petitioner

MS. S.D.TALATI ASSTT. GP for Respondent No. 1

M/S PURNANAND & CO for Respondent No. 2

NOTICE SERVED for Respondent No. 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 06/03/98

ORAL JUDGEMENT

Petitioner before this Court is an employee of Khavda Gram Panchayat, respondent No. 3 herein (hereinafter referred to as "the Gram Panchayat"). The petitioner, by this petition preferred under Article 226 of the Constitution of India, has claimed for himself and other similarly situated employees the benefit of the house rent allowance, pension, leave travel concession, encashment of leave, gratuity, benefit of recommendations of 4th Pay Commission and appointment on compassionate grounds to the dependent of the deceased employees. It is also averred that the petition be treated as a representative petition to safe guard the interest of the petitioner as well as other similarly situated employees working in the Gram Panchayat. However, at the time of hearing Mr. Thakkar, the learned advocate appearing for the petitioner has clarified that the petitioner presses this petition for himself and does not intend to press this petition as a representative petition. This petition and the judgment rendered herein are, therefore, confined to the petitioner alone.

2. It is the claim of the petitioner that he has been appointed by the Gram Panchayat as its employee and has been working as such since 26th August, 1976. However, all along he has been paid consolidated pay which is revised from time to time. The petitioner has not been paid the salary in regular pay scale or the allowances otherwise admissible to a Government Servant. The petitioner claims that he being the servant of a gram panchayat, is the member of panchayat service as envisaged under section 203 of the Gujarat Panchayats Act, 1961 (hereinafter referred to as "the Act") and he, therefore, is a servant of the State and holds a civil post under the State. The petitioner, therefore, is entitled to all the service benefits to which a Government servant would be entitled under the relevant laws. In support of his contentions, Mr. Thakkar has relied upon the judgments in the matters of Ramanlal Keshavlal Soni and others v/s State of Gujarat and others (AIR 1977 GUJARAT 76); State of Gujarat and others v/s. Ramanlal Keshavlal Soni and others (AIR 1984 SC 161); Naroda Nagar Panchayat Karamchari Mandal, Naroda & Ors. v/s Kanubhai Ratilal Patel & Ors. [1995 (1) GCD 503]. He has also relied upon the unreported judgments of this Court in the matter of Halol Nagar Panchayat v/s. State of Gujarat and others [Special Civil Application No. 1205 of 1978 decided on 3rd May, 1983 and confirmed in appeal by the Supreme Court on 18th August, 1989 and in the matter of Navinchandra Harirao Mehta and Another v/s. The State of Gujarat and others (Special Civil

Application No. 427 of 1992 decided on 15th August, 1997) and in the matter of Ramniklal D. Shah v/s. State of Gujarat and others (Special Civil Application No. 2019 of 1988 decided on 24th October, 1997). In the three unreported judgments referred to hereinabove, this Court has followed the judgments rendered by this Court and the Hon'ble Supreme Court in the matter of Ramanlal Keshavlal Soni (supra).

3. The Gujarat Panchayats Act, 1961 was enacted to consolidate and amend the law relating to the village panchayat and the district local boards in the State of Gujarat with a view to reorganizing the administration pertaining to the local Government in furtherance of the object of the democratic decentralization of powers in favour of different classes of panchayats. Sec. 203 thereof provides for constitution of the panchayat service in connection with the affairs of the panchayats for the purpose of bringing about the uniform scales of pay and uniform conditions of service for persons employed in the discharge of functions and duties of the panchayats. Sub-section (2) thereof provides that the Panchayat Service shall consist of such classes, cadres and posts and the initial strength of officers and servants in each such class and cadre shall be such as the State Government may by order from time to time determine. Sub-section 2A thereof provides for district cadres, taluka cadres and local cadres. Sub-section (3) thereof empowers the State Government to make rules regulating the mode of recruitment either by holding examinations or otherwise and conditions of service of persons appointed to the panchayat service and the powers in respect of appointments, transfers and promotions of officers and servants in the Panchayats Service and disciplinary action against any such officers or servants. Section 205 of the Act provides that appointment to the post in panchayat service shall be made (a) by direct recruitment; (b) by promotion, or (c) by transfer of a member of the State Service to the Panchayat Service. Section 157 of the Act empowers the State Government, inter alia, to transfer such personnel to the District Panchayat as may be necessary to enable the District Panchayat to exercise powers and discharge functions and the duties transferred to it. Sub-section (1) of section 158 of the Act, inter alia, empowers the State Government to transfer the staff employed by it to the district panchayat. Sub-section (2) thereof provides, inter alia, for transfer of such staff by the district panchayat to any panchayat subordinate to it. Section 206 of the Act empowers the Government, inter alia, to allocate its employees to the panchayat service.

In exercise of these powers and with a view to effectively achieve the objects of the Act, the Government has framed various rules such as Gujarat Panchayat Service (Absorption, Seniority, Pay & Allowances) Rules, 1965; Gujarat Panchayat Service Selection Board (Functions) Rules, 1964; Gujarat District Panchayats Service Selection Committee (Functions) Rules, 1964 and various other rules governing the recruitment, conditions of service, promotion, transfer, pension, etc. of the panchayat servants.

The validity of sections 157, 158 and 206 of the Act came up for consideration before this Court in the matter of G.L.Shukla and another vs. State of Gujarat ( 8 GLR 833). Said provisions were assailed as being violative of Article 310 and 311 (2) of the Constitution of India. It was argued that the transfer, allotment or allocation of the Government servant to the panchayat service would amount to severance of relationship of master and servant between the State Government and its employees without following due course of law. The Court negatived this contention. The Court held that the allocation made by the State under section 206 did not have the effect of bringing about the termination of service of the Government servants. The Court after considering the scheme of the Act, concluded that the panchayat service is one single service with one master namely the State Government and each panchayat is not the master of the servant employed in discharge of its functions and duties. In paragraph 9 of the judgment, the Court held that;

"the conclusion which emerges from this discussion is that the panchayat service is distinct and separate service set up for serving panchayat organization of the State and it is as much a civil service of the State as the State Service. The State can have many services such as State Service, Police Service, Engineering Service, etc. Panchayat service is one of them. In panchayat service as in the State Service, State is the master and every officer or servant employed in the panchayat service is the servant of the State and not of the Panchayat under which he may be serving for the time being."

The Court, therefore, upheld the constitutionality of section 157, 158 and 206 of the Act. In exercise of the powers conferred upon the State Government under the Act, certain employees of the former

municipalities were transferred to the panchayat service. Such transferred employees however, were deprived of several service benefits including revision of pay, which were otherwise admissible to the State servants. Feeling aggrieved, some of them approached this Court. The Court, in the matter of Ramanlal Keshavlal Soni and others (supra), following the judgment in the matter of G.L.Shukla (supra) and the Full Bench judgment in the matter of Shamji Karshan vs. The State of Gujarat (16 GLR 313), confirmed that the panchayat service was the civil service of the State and the employees of the panchayat service are the holders of civil posts under the State.

Correctness of the said judgment was challenged before the Supreme Court in the matter of State of Gujarat vs Ramanlal Keshavlal and others (supra). Pending appeal before the Supreme Court, the State Government amended the Act by Gujarat Panchayat(3rd Amendment) Act, 1978 and the validity of the said amendment was also challenged before the Supreme Court by filing writ petitions nos. 4266 to 4270 of 1978. Said writ petitions and the appeal preferred by the State Government came up for hearing before the 5 Judges' Bench of the Supreme Court. The Court, however, in its judgment reported in AIR 1981 SC at page 53, answered only two questions (1) whether the panchayat service was a civil service of the State; and (2) whether under unamended Act, there was a common centralized panchayat service.

In paragraph 23 of its judgment, the Court held that;

"we, therefore, reject the contention of the State Government that the panchayat service is not the civil service under the State. We, however, make it clear that the view taken by us in the present case does not necessarily lead to the conclusion that every employee of the local body who is a member of the panchayat service should be treated as a member of the State Civil Service. It is the question of fact to be decided in each case depending on the circumstances of the case."

The Court answered the questions referred to hereinabove as under :

"(1)The Panchayat Service constituted under the Panchayats Act is a civil service of the State of

Gujarat;

and

(2) that under the unamended Act, there was common centralised Panchayat Service. "

The aforesaid appeal and the writ petitions thereafter came up for hearing before another Five Judges' Bench for consideration which judgment is reported in AIR 1984 SC at page 161. The Court, after considering the relevant facts, held that the writ petitioners before this Court (i.e. respondents in appeal preferred before the Supreme Court) who were the employees of the former municipalities and were absorbed in local cadre belonged to panchayat service and, thus, were the civil servants of the State.

As referred to hereinabove, the judgments of the Supreme Court and this High Court have been followed by this Court in several other matters.

It, therefore, cannot now be argued that the panchayat service is not a civil service of the State or that the Panchayat Servants are not the civil servants of the State. However, as observed by the earlier Five Judges Bench of the Supreme Court in its judgment, relevant part of which is reproduced hereinabove, the question whether a particular employee of a local body should be a member of the State Civil Service is a question of fact to be decided in each case depending on the circumstances of that case. In the present case also, therefore, it is required to be answered that the petitioner herein who is an employee of the Gram Panchayat is a member of the panchayat service as envisaged under section 203 of the Act and can be said to be a member of the State Civil Service.

Mr. Thakkar has submitted that in support of his claim, the petitioner has produced a certificate given by the Sarpanch of the gram panchayat to the effect that the petitioner has been serving as Octroi Clerk since 26th August, 1976 and that he was being paid consolidated pay of Rs. 1500/-. Said certificate has been given on 4th January, 1992. Mr. Thakkar has submitted that the facts stated in the petition or the genuineness of the above referred certificate have neither been denied nor questioned by any of the respondents. He has, therefore, submitted that in absence of such denial, in view of the provisions contained in Order VIII, Rule 5 of the Code of Civil Procedure, 1908, the facts stated must be taken to

be admitted facts. Mr. Thakkar is right in contending that in absence of denial by any of the respondents, the facts stated in the petition should be treated as admitted facts. The petitioner, therefore, must be held to be an employee of the Gram Panchayat working as such since 26th August, 1976. That fact, in itself, however, would not answer the question whether the petitioner is a member of the Panchayat Service as envisaged under section 203 of the Act. The Gujarat Panchayat Service Selection Board has been established under section 210 of the Act, inter alia, for selecting the candidates for recruitment to the posts in Panchayat Service and a District Panchayat Service Selection Committee in each District has been established under section 211 of the Act for, inter alia, selecting the candidates for recruitment to the posts of Panchayat Service. The procedure to be followed by the Board and the Committee established under sections 210 and 211 of the Act respectively have been provided in the Gujarat Panchayats Service Selection Board (Functions) Rules, 1964 and the Gujarat District Panchayats Service Selection Committee (Functions) Rules, 1964. In my view, therefore, it is imperative that an employee of the local body for being a member of the Panchayat Service shall be recruited after his selection either by the Gujarat Panchayat Service Selection Board or by the District Panchayat Service Selection Committee. Unless an employee is selected either by the aforesaid Board or the Committee as provided under the relevant rules, he cannot be said to be a member of the Panchayat Service nor can he be said to be a civil servant of the State.

The petitioner herein does not claim that he is an employee of the Gram Panchayat duly selected either by the Selection Board or the Selection Committee established under sections 210 or 211 respectively of the Act. The petitioner has not produced any material evidencing that he has been appointed after due selection as aforesaid. In absence of such material, it cannot be held that the petitioner is a member of the panchayat service. When inquired of, Mr. Thakkar has vehemently argued that in absence of denial by either of the respondents, he need not produce any such material. Though the factum of the petitioner's being employed by the Gram Panchayat has got to be accepted; in absence of relevant material, it cannot be held that the petitioner is a member of the Panchayat Service as envisaged under section 203 of the Act. Unless the petitioner establishes that he is a member of the Panchayat service as envisaged under section 203 of the Act, he cannot be held to be a civil servant of the State and in that view

of the matter, he cannot be held to be entitled to all the service benefits to which a civil servant of the State would be entitled to. I am, therefore, of the view that the petitioner is neither a member of the Panchayat Service nor can he be said to be civil servant of the State. The petitioner is, therefore, not entitled to all the service benefits prayed for by him in the present petition. The petitioner, however, being an employee of the Gram Panchayat, would be governed by the rules and regulations of the Gram Panchayat, if any, and the terms of his appointment.

In view of the above discussion, petition is dismissed. Rule is discharged. There shall be no order as to costs.

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